

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRYL WATSON,

Plaintiff,

No. 16-13770

v.

District Judge Linda V. Parker
Magistrate Judge R. Steven Whalen

CHARLES JAMSEN, ET AL.,

Defendants.

ORDER

Before the Court is Plaintiff's Motion to Defer Summary Judgment [Doc. #16], in which he asks to defer ruling on Defendant Landfair's Motion for Summary Judgment [Doc. #10] until he has had the opportunity for more discovery.

Defendant Landfair's motion is based on Plaintiff's failure to exhaust his administrative remedies as required by 42 U.S.C. § 1997e(a). Plaintiff states that he cannot respond to the motion without reviewing his medical records. But the affirmative defense of exhaustion is based on the question of whether the Plaintiff strictly complied with the Michigan Department of Corrections's grievance procedure, not on the substantive content of medical records or any other discovery. A dismissal based on non-exhaustion is not a decision on the merits, and such dismissal is without prejudice.

Knuckles El v. Toombs, 215 F.3d 640 (6th Cir.2000); *McCloy v. Correctional Medical Services*, 794 F.Supp.2d 743, 751 (E.D.Mich. 2011).

Accordingly, Plaintiff's Motion to Defer Summary Judgment is DENIED.

IT IS SO ORDERED.

Dated: August 11, 2017

s/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify on August 11, 2017 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to non-registered ECF participants August 11, 2017.

s/Carolyn M. Ciesla
Case Manager for the
Honorable R. Steven Whalen